

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

In The Matter Of:

FIREMAN'S FUND INSURANCE
COMPANY, FIREMAN'S FUND
INSURANCE COMPANY OF NEBRASKA,
FIREMEN'S FUND INSURANCE
COMPANY OF NEWARK, NEW JERSEY,
FIREMAN'S FUND INSURANCE
COMPANY OF WISCONSIN,
AMERICAN AUTOMOBILE
INSURANCE COMPANY,
THE AMERICAN INSURANCE
COMPANY, ASSOCIATED INDEMNITY
CORPORATION, NATIONAL SURETY
CORPORATION, and WARNER
INSURANCE COMPANY,

Authorized Insurers.

No. D02-140

CONSENT ORDER
LEVYING A FINE

To: Fireman's Fund Insurance Companies
777 San Marin Drive
Novato, CA 94998

Comes Now the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080 and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner, makes the following:

FINDINGS OF FACT:

1. Fireman's Fund Insurance Companies ("Fireman's" or "Companies") are property and casualty carriers licensed to do business in the state of Washington. Their legal names are: Fireman's Fund Insurance Company, Fireman's Fund Insurance Company of Nebraska, Firemen's Fund Insurance Company of Newark, New Jersey, Fireman's Fund Insurance Company of Wisconsin, American Automobile Insurance Company, The American Insurance Company, Associated Indemnity Corporation, National Surety Corporation, and Warner Insurance Company.
2. The Office of the Insurance Commissioner (OIC) conducted a market conduct exam of Fireman's for the time period July 1, 1998 to June 30, 1999, which exam was adopted by Order of the Commissioner dated August 21, 2000.

3. RCW 48.30.050 requires every advertisement of, by, or on the behalf of an insurer to set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States. Of the advertisements sampled, 18 violations were identified. Violations of this statute were also noted in the prior Market Conduct Examination of the Companies.
4. RCW 48.05.190(1) requires companies to establish procedures that ensure policy documents and correspondence correctly identify the legal name of the insuring company. The Exam identified 408 violations of this statute and regulation.
5. RCW 48.19.040(6) requires companies to adhere to their filed rating plans. The Companies violated this law 37 times in the samples taken by the Examiners.
6. WAC 284-24-100 requires underwriting files to contain supporting documentation for policies rated with scheduled rating plans. 14 violations of this regulation were identified in the Examiners' sample.
7. WAC 284-24-070 allows insurers to "a" rate, and requires files to contain documentation to support the rate. This was violated by Companies in the prior Examination, and another violation was identified during the 98 - 99 Exam.
8. WAC 284-30-560(2) requires binders to show the correct name of the insurers. This regulation was violated six times.
9. RCW 48.22.085(2) requires companies to obtain a signed rejection of PIP coverage. This was violated one time in the Examiners' sampling.
10. WAC 284-30-570 imposes specific requirements on cancellation or non-renewal notices. This was violated in the prior examination, and three violations were noted in this Exam.
11. RCW 48.18.292(5) prohibits the use of comprehensive claims as a reason to non-renew coverage. This was violated in one instance.
12. RCW 48.17.591(1) prohibits non-renewal because of the termination of the agent/company relationship. This was violated one time.
13. WAC 284-30-330 sets forth requirements for specific unfair claims settlement practices applicable to the business of insurance. These requirements were violated in the prior examination, and 169 violations were noted in this Exam.

14. WAC 284-30-340 requires companies to ensure that claim files contain all required work papers and log notes. This regulation was violated 17 times.
15. WAC 284-30-350(1) requires insurers and their agents to fully disclose to first party claimants all pertinent benefits of a policy under which a claim is presented. The Companies violated this regulation in 15 instances.
16. WAC 284-30-360 requires companies to ensure timely responses to notice of claim and pertinent correspondence, as well as promptly providing necessary claim forms, instructions and reasonable assistance so the first party claimants can comply with policy conditions and the insurers' reasonable requirements. 18 violations of this regulation occurred during the Exam period.
17. WAC 284-30-370 requires insurers to investigate all claims within 30 days unless it cannot reasonably be completed within this timeframe. The examiners found 20 violations of this requirement.
18. WAC 284-30-380 requires companies to accept or deny claims within 15 working days after receiving a proof of loss. This was violated in one instance.
19. WAC 284-30-390 sets forth requirements for establishing the market value of total loss vehicles, including payment of all applicable taxes and license fees. Of the claims sampled, 168 violations were identified. Violations of this regulation were also noted in the prior Market Conduct Examination of the Companies.
20. WAC 284-30-395(1) requires companies to send a written explanation of Personal Injury Protection coverage and limitations as required. 376 violations were identified in the Exam.
21. RCW 46.12.070 and WAC 308-58-020(1) require an insurer to notify the Department of Licensing (DOL) of a total loss by completing the Total Loss Claim Settlement Report or forwarding the title to DOL marked destroyed. The Companies violated this requirement in 15 instances.

Based on the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS OF LAW

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.

2. The Companies committed the following violations of Washington law :

- a. The Companies violated RCW 48.05.190(1).
- b. The Companies violated RCW 48.17.591(1).
- c. The Companies violated RCW 48.18.292(5).
- d. The Companies violated RCW 48.19.040.
- e. The Companies violated RCW 48.22.085(2).
- f. The Companies violated RCW 48.19.040.
- g. The Companies violated RCW 48.30.050.
- h. The Companies violated RCW 46.12.070 and WAC 308-58-020(1).
- g. The Companies violated WAC 284-24-070.
- h. The Companies violated WAC 284-24-100.
- i. The Companies violated WAC 284-30-330(1-11).
- j. The Companies violated WAC 284-30-340.
- k. The Companies violated WAC 284-30-350(1).
- l. The Companies violated WAC 284-30-360.
- m. The Companies violated WAC 284-30-370.
- n. The Companies violated WAC 284-30-380.
- o. The Companies violated WAC 284-30-390.
- p. The Companies violated WAC 284-30-395(1).
- q. The Companies violated WAC 284-30-560(2).
- r. The Companies violated WAC 284-30-570.

3. The Companies violated the following provisions of Washington law both on this examination and on a prior examination:

- a. The Companies violated RCW 48.05.190(1).
- b. The Companies violated RCW 48.18.292.
- c. The Companies violated RCW 48.19.040(6).
- d. The Companies violated RCW 48.30.050.
- e. The Companies violated WAC 284-24-070.
- f. The Companies violated WAC 284-24-100.
- g. The Companies violated WAC 284-30-330.
- h. The Companies violated WAC 284-30-360.
- i. The Companies violated WAC 284-30-390.
- j. The Companies violated WAC 284-30-395(1).
- k. The Companies violated WAC 284-30-570.

CONSENT TO ORDER

NOW, THEREFORE, Fireman's Fund Insurance Companies consent to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of Fireman's payment of a fine and such other terms and conditions as are set forth below:

1. Fireman's consents to the entry of this Order, and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;
2. Within thirty days of the entry of this Order, Fireman's agrees to pay to the OIC a fine in the amount of \$300,000 of which \$150,000 Dollars is suspended on condition that Fireman's shall not violate Washington State's insurance code or regulations for a period of two years from the date of entry of this Order;
3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of Fireman's certificate of authority, and for the recovery of the fine, including the suspended portion, in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington;
4. Failure to comply with the violated rules and regulations set forth above in the Conclusions of Law section of this Consent Order, incorporated by reference herein, shall constitute grounds for the recovery of the suspended portion of the fine; and
5. Failure to comply with the Compliance Plan set forth in Exhibit A shall constitute a per se violation of the laws of the State of Washington and be subject to such further enforcement as the Commissioner deems necessary in the circumstances.

EXECUTED, this 20th day of November, 2002.

FIREMAN'S FUND INSURANCE COMPANIES

By: _____

Typed Name: _____

Typed Corporate Title: _____

ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, Comes the Insurance Commissioner of the State of Washington, and orders FIREMAN'S FUND INSURANCE COMPANIES to pay a fine in the amount of \$300,000 the sum of which \$ 150,000 is suspended pending the Companies compliance with the laws and regulations of the State of Washington for the next two calendar years; and

It is further ordered that Fireman's pay the unsuspended portion of said fine within thirty days of the entry of this Order in Tumwater Washington; and

It is further ordered that Fireman's comply with and carry out the Compliance Plan set forth in Exhibit A; and

It is further ordered that Fireman's failure to pay the fine within the time limit set forth above shall result in the revocation of the insurers' Certificates of Authority, and in the recovery of both the suspended and unsuspended amounts of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington; and

It is further ordered that Fireman's failure to comply with the laws and regulations set forth in the Conclusions of Law section of this Consent Order, incorporated by reference herein, for the next two calendar years from the date of this Order forward, shall be grounds for recovery of the suspended portion of the fine.

ENTERED AT TUMWATER, WASHINGTON, this 26th day of November, 2002.

MIKE KREIDLER
Insurance Commissioner

By:

CHARLES D. BROWN
Staff Attorney
Legal Affairs Division

**EXHIBIT A - COMPLIANCE PLAN
FIREMAN'S FUND INSURANCE COMPANIES**

I. RECITAL

A. The Companies

Fireman's Fund Insurance Companies ("Fireman's" or "Companies") are property and casualty carriers licensed to do business in the State of Washington. Their legal names are: Fireman's Fund Insurance Company, Fireman's Fund Insurance Company of Nebraska, Firemen's Fund Insurance Company of Newark, New Jersey, Fireman's Fund Insurance Company of Wisconsin, American Automobile Insurance Company, The American Insurance Company, Associated Indemnity Corporation, National Surety Corporation, and Warner Insurance Company.

The Office of the Insurance Commissioner ("OIC") conducted a market conduct exam of Fireman's for the time period July 1, 1998, to June 30, 1999, which exam was adopted by Order of the Commissioner dated August 21, 2000, except complaints. Complaints were reviewed for the time period 1995 to 1999.

B. Statement of Intent

Fireman's hereby voluntarily enters into this Plan with OIC to promote compliance with the laws and regulations of the State of Washington by the Companies and its employees, directors, officers and contractors.

C. Scope of Plan

This Plan shall apply to such management or billing contracts or arrangements to the extent of the responsibility undertaken pursuant to each contract or arrangement. This Plan includes all employees, directors, officers and contractors of the Companies, and any employees, directors, officers and contractors of any subsidiary of the Companies.

D. Severability

The parties to this Plan stipulate that the Companies referenced in Section I of this Plan shall apply the terms and conditions of this Plan to each of its subsidiaries, whether or not that subsidiary is specifically identified. Where the Companies' subsidiary is exempted from a section of this Plan, the Plan shall so state, and reference the Companies' subsidiary by name.

II. AGREEMENT OF THE PARTIES

A. Purpose of and Consideration for the Plan

The parties enter into this Plan as part of the enforcement action by OIC arising out of the Order on Examination entered against the Companies by the Commissioner August 21, 2000. Fireman's did not request a hearing to contest the Findings, Conclusions and Order Adopting Report issued June 21, 2000, and further agree to waive a hearing as to the terms of this Plan and enforcement taken by the OIC in the event this Plan is materially breached by the Companies. Fireman's acknowledges that any breach of this Plan subjects the Companies to further action by OIC, at OIC's discretion.

B. Term of Plan

The period of the compliance obligations assumed by the Companies under this Plan shall be the period of time between the effective date of the Order adopting the most recent Market Conduct Examination, and the next Market Conduct Examination's adoption, but in any event, for not less than two calendar years from the effective date of this Plan. The Effective Date of this Plan shall be predicated upon both parties signing the Consent Order Levying a Fine, on which date it shall become final and binding.

C. Compliance Plan

1. Internal Audit

- a. Information to OIC: Within thirty (30) days of the effective date of this Plan, the Companies shall establish an annual audit plan and schedule with regard to the matters included in the Order on Examination, and forward a written copy of the plan and schedule to the OIC Legal Affairs Division. Copies of each internal audit report on audits performed from the effective date of this Plan to December 31, 2004, shall also be provided to OIC Legal Affairs Division within thirty days of the report being issued. Reports shall be issued no later than thirty days following the reporting period.
- b. Internal Audit Obligations: The Companies shall provide their internal audit unit or division(s) with the Market Conduct Examination Findings, Conclusions and Order Adopting Report of OIC and direct its internal audit personnel to include the areas of deficiency and recommendation in annual internal audits conducted pursuant to Section C.1.a. above.

- c. **Correction of Exceptions:** Any exception or deficiency identified by the internal audits conducted pursuant to this Plan shall be corrected. The Companies agree to advise OIC within sixty (60) days of the audit report of any corrective measures contemplated to address any such exceptions or deficiencies or any other areas requiring correction. The OIC shall then review these measure(s) and notify the company of any comments associated thereto. Unless the OIC requests modifications to the proposed corrective measure(s), the Companies shall have sixty (60) days from the end of the OIC's review period to implement the measure(s). However, should the Companies need longer than sixty (60) days to correct any exception or deficiency, they may contact the OIC Legal Affairs Division and request an extension to the sixty (60) day requirement.
- d. **Confidentiality of Internal Audits:** The internal audits conducted under this Plan provide information which is confidential and proprietary to the Companies. OIC agrees to keep these internal audits confidential and not to disclose the audit reports or any information contained in the audit reports except as may be required by applicable public disclosure laws. However, in the event that OIC receives a request for disclosure of the internal audits or any information contained in the internal audits which has been identified by Fireman's Fund as containing Privileged, Confidential, or Trade Secret material or information, OIC agrees that it shall withhold the documents from disclosure for at least 10 days from the date the request was received and immediately notify Fireman's Fund of the nature of the request to allow Fireman's Fund to take appropriate action.

2. Internal Controls

- a. Within ninety (90) days of the effective date of this Plan, the Companies agree to establish formal procedures related to:
 - 1. Doing business in the companies' own names.
 - 2. Claims management practices that comply with Washington State law.
 - 3. Establishing total losses, documenting and identifying taxes and fees, and surrendering title to the Washington Department of Licensing.
 - 4. Communicating PIP Benefits to consumers and providing training to claims personnel regarding the same.
 - 5. Adherence to Companies' filed rating plans for Washington State business.
- b. The formal procedures will be communicated to underwriting and claims personnel handling Washington State business. The formal procedures will include

documentation requirements related to actions to be taken in the event that a violation occurs and a monitoring mechanism or process.

- c. The Companies shall conduct training programs that meet the requirements of this Plan. A schedule of training for current employees shall be provided to OIC within ninety (90) days of the effective date of this Plan. The Companies may, at their election, request training from OIC regarding compliance with Washington State law, for which it shall reimburse OIC pursuant to the rate schedule utilized for Market Conduct Examinations.

D. Miscellaneous

1. Preservation of Statutory Authority: Nothing in this Plan restricts, enlarges or otherwise modifies the jurisdiction of OIC. Neither this Plan, nor its termination, shall affect the rights and obligations of OIC under applicable statutes or regulations or be deemed an interpretation of such statutes or regulations.
2. Authority to Enter Plan: Each of the parties hereto give express assurance that under applicable laws, regulations and where applicable, its Articles and By-Laws, it has the authority to comply fully with the terms and conditions of this Plan, and that it will provide written notification to the other parties within ten days of any material change to this authority or of any violation of this Plan.
3. Notification and Submission of Information and Reports: Unless otherwise stated in writing subsequent to the effective date of this Plan, all notifications or reports required under this Plan shall be submitted to the entities listed below:

OIC: Legal Affairs Division
 Office of the Insurance Commissioner
 P.O. Box 40255
 Olympia, WA 98405-0255

Companies: General Counsel's Office
 Fireman's Fund Insurance Company
 777 San Marin Drive
 Mail Drop A26
 Novato, CA 94998

4. Breach and Default Provisions: The Companies are expected to fully comply in a timely manner with the obligations of this Plan. Failure to comply with the timelines or

obligations set forth herein may result in a stipulated penalty of \$1,000.00 for each failure to comply, which may accrue on the day after the obligation became due, and accumulate on an aggregated basis for each day the Companies fail to have their training program in place, required policies and procedures, or internal audit examination process.

Payment is due within thirty (30) days of receipt of a demand letter from the OIC for any of the stipulated penalties and payable on an accrued basis for every day thereafter until such time as the Companies provide written proof to OIC's satisfaction that it is in compliance with the area of default.

In the event the Companies elect an ALJ hearing to dispute OIC's determination of noncompliance, the stipulated penalties shall continue to accrue until the Companies cure, to OIC's satisfaction, the alleged breach in dispute. However, the payment of such accrued stipulated penalties shall remain pending until the ALJ determination.

5. Force Majeure Provision: If the Companies fails to perform their obligations hereunder because of acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, strikes or other labor related work stoppages, embargo, government action, or the failure of equipment or interruption of communications or computer facilities, or other causes, beyond its reasonable control or not of the same class or kind as specifically named above, then the Companies' performance shall be excused for a period equal to the period of such cause for failure to perform.
6. Binding Nature of Plan: This Plan is binding on the successors, assignees, affiliates and transferees of the Companies and each of them, except that the obligations do not apply to business units or lines of business that the Companies or a Company successor does not own or operate as a result of an asset sale to an unrelated third party.